

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE
SOUTHERN DISTRICT OF GEORGIA
Savannah Division

In the matter of:

SUZANNE HUTCHINSON
(Chapter 7 Case 90-41382)

Debtor

ROBERT L. COLEY,
UNITED STATES TRUSTEE
REGION 21

Plaintiff

v.

JACK C. FARMER,
d/b/a American Documents

Adversary Proceeding

Number 90-4175

FILED

at 4 O'clock & 30 min. P.M

Date 3 / 18 / 91

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

Yama

MEMORANDUM AND ORDER

On November 26, 1990, a hearing was held upon a Complaint to Recover Unauthorized Compensation filed by the United States Trustee for Region 21. Upon consideration of the evidence adduced at trial, the briefs and other documentation submitted by the parties, and applicable authorities I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

490-0175

Robert L. Coley, United States Trustee, Region 21, brought this adversary proceeding against Jack C. Farmer, d/b/a American Documents, seeking review by this Court of compensation paid by the Debtor, Suzanne Hutchinson, and the return of such sums as are unreasonable or unauthorized and for other unspecified relief.

Debtor testified that Defendant Jack C. Farmer prepared the bankruptcy petition which the Debtor filed with this Court on July 27, 1990, and for which she paid the Defendant Farmer the sum of \$149.00. The Debtor further testified that Mr. Farmer explained the difference between a Chapter 7 bankruptcy petition and a Chapter 13 bankruptcy petition and that the only prior bankruptcy knowledge which the Debtor had was that a Chapter 7 "got rid of all her bills."

The Debtor furnished information to Mr. Farmer as to her ownership of a 1980 Chevrolet Monza which Farmer failed to list in the B-2(f) schedule filed with the Court. The B-2 schedule, subparagraph (c) and (e), listed "none" for property but later the Defendant Farmer called the Debtor about household items and clothes and said she had to list them. The Debtor returned to Mr. Farmer's office where the household items and clothes were added to the B-2

schedule. The Debtor also testified that she did not make the decision as to what to put in the B-4 exemption schedule and that that schedule was entirely completed by Defendant Farmer.

The petition as filed on July 27, 1990, and the petition filed on September 4, 1990, used the incorrect form in that question 15 of the Debtor's Statement of Affairs did not reveal that \$149.00 was paid to Defendant Farmer. Official Form 7, as required by Bankruptcy Rule 9009 and Bankruptcy Rule 1006(b) should have been used. Official Form 7, question 15(b) and (c) states:

(b) Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to an attorney, to any other person on the attorney's behalf, or to any other person rendering services to you in connection with this case? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

(c) Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, to any other person on the attorney's behalf, or to any other person rendering services to you in connection with this case? (If so, give particulars, including amount and terms of obligation.) (emphasis added)

The form used on the Debtor's petition for question 15(b) and 15(c) states as follows:

(b) Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney, or to any other person on his behalf?

(c) Have you either during the year or immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf?

Each of the aforecited questions were answered "pro se" and "self". In each question the defendant omitted from the form the reference to "any other person rendering services to you in connection with this case".

Defendant Farmer engaged in newspaper advertisements which were listed under the caption of "legal services" but did not list any advertising in the same paper for typing services. The advertising contained the language "Self-help, non-lawyer", "Are you ignoring your legal needs", "You can wipe out your debt", "Will stop creditors", and "Keep all property".

Mr. William P. Smith, III, General Counsel of the State Bar of Georgia, testified as an expert witness on behalf of the United States Trustee as to the parameters of the practice of law in the State of Georgia. Mr. Smith testified that in his

professional opinion, Defendant Farmer was engaged in the unauthorized practice of law by the giving of legal advice, the subsequent calling of the Debtor, the filling in of the B-4 schedule, in advertising under a column in the newspaper listed as "Legal Services", in advising in his advertising that "You can wipe out your debt", "Can stop creditors", and "Keep all property". In addition, Mr. Smith testified that Mr. Farmer had engaged in the unauthorized practice of law in altering the information in the Debtor's B-2 schedule with respect to not listing the 1980 Chevrolet Monza.

This Court has previously entered orders in three (3) cases involving Mr. Farmer. The first was Gary Lee Dyer and Sandra L. Dyer, Case Number 90-40059, Adversary Number 90-4058, decided June 22, 1990, in which I made the following findings:

In this case the debtor took a Complaint and Summons to Jack Farmer at American Documents. Mr. Farmer advised he would "take care of it". One week later Mr. Farmer called the debtors and informed them that the answers were ready for their signatures. Debtors signed certain papers.

Testimony of the Debtors revealed a cash advance of \$600.00 was received by them from Household Finance within fifteen (15) days of their filing for relief under Chapter 7. At the time the advance was received, the Debtors were contemplating bankruptcy and had already visited the office of American Documents to have their petition and schedules prepared. After obtaining the advance they used it to pay off a purchase money obligation on their

television set. Debtors then returned to American Documents where they amended their schedules to include the recently obtained cash advance from Household Finance as well as amending their claim of exemption to include the television set. The Debtors admitted upon cross-examination that they felt that they were doing "wrong" but that they had been advised by Mr. Farmer that their actions were legal.

The second case was Gina D. Overstreet, Case Number 90-20214, decided June 22, 1990, in which the facts revealed that:

Debtor went to American Documents where she talked to a person whom she believes was named Jack Farmer. Mr. Farmer stated that he had been a lawyer at one time but was not now a lawyer, counseled her regarding the advisability of filing bankruptcy and told Debtor that she needed to file a Chapter 7. He explained the effect of Chapter 7 to her and what to expect at the 341 meeting. Debtor filled out a form given to her by Mr. Farmer which requested certain information and paid \$149.00 to Jack Farmer at American Documents for his services.

When Debtor completed the form given to her by Mr. Farmer, she disclosed that she owned certain personal property, i.e., clothing, jewelry and so forth.

Farmer completed Debtor's Chapter 7 Petition, Statement of Affairs, and Schedules to file with the Bankruptcy Court. At Farmer's instructions Debtor signed the documents under penalty of perjury and mailed them to the Bankruptcy Court in Savannah, Georgia.

Debtor's Schedule B-2, Statement of All Personal Property, represented that she had no personal property as nothing was listed on her Schedules and the total value of personalty was stated to be zero at the bottom of the page.

Debtor testified that she did own personal property as of the date her case was filed and that she had given this information to American Documents and Jack Farmer. Notwithstanding this fact, her Schedules were prepared for her, omitting this information and she was advised by Farmer to sign those Schedules, under penalty of perjury.

The third case was Gary Lee and Sharon Dean Brown, Chapter 13 case Number 89-41992, filed December 12, 1989 where I held that:

This Court has observed repeated irregularities in cases where papers have been prepared by American Documents and Jack Farmer. In at least one other case testimony revealed unequivocally that Mr. Farmer is rendering legal advice and counsel although he is not an attorney and prepared a materially false budget which he caused debtors to sign under penalty of perjury.

Essentially the three primary issues presented to the Court in this proceeding are as follows:

- a) Whether the Defendant is required to reveal the amount paid by Debtor coming to his place of business for services rendered in connection with this bankruptcy case.

- b) If the fees charged for services rendered are properly revealed, whether the fees charged are reasonable or excessive and in what amount, and if excessive what the appropriate remedy is.
- c) Whether Defendant is engaged in the unauthorized practice of law and if so, what the appropriate remedy is.

These questions will be dealt with separately hereinafter.

CONCLUSIONS OF LAW

I. Defendant is Required to Reveal the Amount Paid by Debtors Coming to His Place of Business for Services Rendered in Connection with Bankruptcy Cases.

11 U.S.C. Section 329 of the Bankruptcy Code requires a debtor's attorney to file with the Court a statement of compensation which has been paid to him or agreed to be paid for his services. Section 329 permits the Bankruptcy Court to determine the reasonableness of his compensation. Section 329 reads as follows:

(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be

paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

(b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to--

- (1) the estate if the property transferred--
 - (A) would have been property of the estate; or
 - (B) was to be paid by or on behalf of the debtor under a plan under Chapters 11, 12, or 13 of this title; or
- (2) the entity that made such payment.

The fact that Farmer is not an attorney does not excuse him from compliance with Section 329. In re Webster, 120 B.R. 111, 114 (Bankr. E.D.Wis. 1990) [(citing In re Telford, 36 B.R. 92 (9th Cir. BAP 1984); In re Glad, 98 B.R. 976 (9th Cir. BAP 1989); In re Grimes, 115 B.R. 639, 649 (Bankr. D.S.D. 1990)]. As noted in Telford:

The term 'attorney' is used in various sections of the Bankruptcy Code Ordinarily, the term contemplates someone licensed to practice law. Particularly, in §542(c) [requiring turnover of the debtor's records] and §502(b)(5) [providing for

allowance of claims in a reasonable amount to an attorney or insider] it would be an anomaly if those sections did not reach unlicensed individuals who are performing legal services.

In Jones v. American Bankruptcy Council, 1 B.C.D. 870 (D.C.Ca. Zirpoli, D.J., 1974) a lay person who sold 'The Layman's Guide to Bankruptcy' asserted that the court was without jurisdiction over a lay person and that only goods, not services, were sold. Section 60(d) of the Bankruptcy Act empowered the bankruptcy court to examine any agreement between the debtor and an attorney at law for services rendered in connection with the petition and permitted cancellation of any excess obligation. The court pointed out from the legislative history of the 1963 amendment to §60(d) that it is not so much who renders the services but what sort of services are rendered that is the subject of inquiry. It is the legal service rendered or to be rendered in contemplation of bankruptcy that the court may examine on its own motion. The court affirmed the approach of the bankruptcy judge as consonant with the purpose of §60(d), saying that the stimulus that would cause people to seek the services of a lay person is the same fear that caused Congress to amend §60(d), namely, the fear of high attorney's fees. ' . . . [I]t would be odd that section 60(d) should permit no review of fees charged by people like appellant if, in fact, he is providing legal services.' The trial court should determine if Goudie was practicing law. If so, he is subject to §329 even though he is unlicensed. The general principles for allowing fees should apply.

36 B.R. at 94 (emphasis provided).

Because, as will be further clarified in this Opinion, I find that Defendant Farmer was engaged in the practice of law, he was required to reveal the amount paid by debtors or agreed to be paid by debtors for his services in connection with their bankruptcy cases but failed to do so. 11 U.S.C. §329.

II. Defendant is Engaged in the Unauthorized Practice of Law.

In determining what constitutes the unauthorized practice of law before United States Bankruptcy Courts, the courts look to state law for guidance. In re Bachman, 113 B.R. 769, 772 (Bankr. S.D. Fla., 1990). Persons not licensed as attorneys at law are prohibited from practicing law within the State of Georgia. Georgia law, O.C.G.A. Section 15-19-51 prohibits and defines the unauthorized practice of law and reads in relevant part:

- (a) It shall be unlawful for any person other than a duly licensed attorney at law:
- (4) To render or furnish legal services or advice;
- (6) To render legal services of any kind in actions or proceedings of any nature;
- (7) To assume or use or advertise the title of 'lawyer', 'attorney', 'attorney at law', or equivalent terms in any language in such manner as to convey the impression that he is entitled to

practice law or is entitled to furnish legal advice, services, or counsel; or

- (8) To advertise that either alone or together with, by, or through any person, whether a duly and regularly admitted attorney at law or not, he has, owns, conducts, or maintains an office for the practice of law or for furnishing legal advice, services, or counsel.

(b) Unless otherwise provided by law or by rules promulgated by the Supreme Court, it shall be unlawful for any corporation, voluntary association, or company to do or perform any of the acts recited in subsection (a) of this Code section.

O.C.G.A. Section 15-19-56 provides the penalty for prohibited conduct:

(a) Any person, corporation or voluntary association violating Code Section 15-19-51 . . . shall be guilty of a misdemeanor.

(b) Every officer, trustee, director, agent, or employee of a corporation or voluntary association who directly or indirectly engages in any of the acts prohibited in Code Section 15-19-51 . . . or assists a corporation or voluntary association in performing the prohibited acts shall be guilty of a misdemeanor . . . Nothing in this subsection shall prevent any court having jurisdiction from punishing the corporation or its officers for contempt.

As early as 1931, the Supreme Court of Georgia defined the practice of law in this state as including the preparation of legal instruments:

[We] are of the opinion that the practice of law . . . [is] not confined to practice in the courts of this state, but [is] of larger scope, including the preparation of pleadings and other papers incident to any action or special proceedings in any court or other judicial body, conveyancing, the preparation of all legal instruments of all kinds whereby a legal right is secured, the rendering of opinions as to the validity or invalidity of the title to real or personal property, the giving of any legal advice, and any action taken for others in any matter connected with the law. Boykin v. Hopkins, 174 Ga. 511, 519, 162 S.E. 796 (1931).

Mr. William P. Smith, General Counsel for the State Bar of Georgia, appeared as an expert witness on behalf of the United States Trustee, and was qualified to testify as to the scope of the practice of law in the State of Georgia. Mr. Smith testified that the practice of law in this state is defined as the giving of any legal advice and any action taken for others in any manner in connection with the law. See Dixon v. Reliable Loans, Inc., 112 Ga. App. 618, 145 S.E.2d 771 (Ga. App. 1965). Mr. Smith further testified that, in his expert opinion, a person wishing to prepare legal petitions for another, without practicing law in this state, is limited to simply giving the document to the person, having that

person fill it out, and retyping the precise information in the same configuration as given by the customer. If the individual performs any additional function such as correcting the form, seeking additional information, rearranging the information which has been submitted or placed on the form, or even advising the person how to fill out the form, such acts go beyond the mere furnishing of "typing services" and constitute the giving of legal advice and the unauthorized practice of law. I find Mr. Smith's testimony to be persuasive and adopt the parameters testified to by him as the appropriate scope of the practice of law in this state.

It is clear based upon the testimony of Ms. Hutchinson that Defendant Farmer went well beyond the permitted scope of a legal "typing service" and was engaged in the unauthorized practice of law. The uncontradicted testimony of Ms. Hutchinson reveals that Mr. Farmer not only rendered legal advice in discussing the relative merits of a Chapter 7 versus Chapter 13 filing, but also in advising her as to how to fill out the B-2(f) schedules, in making the determination as to the Debtor's B-4 exemptions, and in omitting the Debtor's 1980 Chevrolet Monza from the Debtor's B-2(f) schedules.

Having determined that the Defendant has engaged in the unauthorized practice of law in violation of O.C.G.A. Sections 15-19-51 and 56, and the violation of 11 U.S.C. Section 329, I now

consider an appropriate remedy. In considering the appropriate remedy to regulate the unauthorized practice of law, courts shall consider the policy of protecting the public's interest in effective legal representation and also shall recognize the lack of a civil malpractice remedy for persons damaged by a non-lawyer practitioner. Matter of Arthur, 15 B.R. 541 (Bankr. E.D.Pa. 1981). In In re Chas. A. Stevens & Co., 108 B.R. 191, 194 (Bankr. N.D.Ill. 1989), the Court declared:

In extreme cases, the unauthorized practice of law may be enjoined where it appears that an injunction is the only remedy to stop such a practice.

This is an extreme case which warrants the issuance of a permanent injunction. Defendant Farmer has preyed upon unfortunate debtors at a time when they are most vulnerable. As a non-attorney, he is not subject to, nor are his "clients" entitled to the protection of the Standards of Conduct set forth in the Rules and Regulations for the Organization and Government of the State Bar of Georgia, a self-regulating body of professionals with very high ethical standards with which each and every member of the State Bar of Georgia is required to comply or face harsh discipline. Rather than the full disclosure of all relevant facts and complete candor expected of an attorney before this tribunal, Defendant Farmer has

taken steps to conceal the fact that compensation was paid over to him for bankruptcy related services. Accordingly, the remedy of a permanent injunction is appropriate.

O R D E R

Inasmuch as I find that Defendant Farmer was engaged in the unauthorized practice of law in this state in violation of O.C.G.A. Sections 15-19-51 and 15-19-56, and 11 U.S.C. Section 329, IT IS THE ORDER OF THIS COURT that:

- 1) Defendant Farmer and all persons in its employ in any capacity and doing business under any name be and hereby are permanently enjoined from engaging in the unauthorized practice of law, which unauthorized actions include: providing counseling, advice, and recommendations with respect to any of the provisions of the Bankruptcy Code and Rules; preparing either directly or indirectly, the bankruptcy petition, statement of affairs and schedules; and preparing any motions or applications of any kind pertaining to bankruptcy. However, Defendant will be permitted to perform a bonafide typing service provided the

typing service performed is strictly limited to typing verbatim of pleadings or forms prepared by individual debtors, exactly as submitted by the debtors to the Defendants. For any and all such typing services rendered, Defendant shall be required to maintain records on file including the original copy submitted by the debtor for typing, in the debtor's handwriting, to evidence strict compliance with this Order.

- 2) That Defendant shall, within ten (10) days from the date of this Order, remit to Debtor, Suzanne Hutchinson, any and all fees collected for services rendered in connection with her bankruptcy filing. That is, \$149.00 or such other amount as Defendant received from the Debtor. In view of the fact that said "services" were unlawful and efforts were made to conceal said payments from this Court, Defendant shall not retain any funds collected from this Debtor. Let judgment against Defendant for said amount be entered.
- 3) Defendant shall, within ten (10) days after the date of this Order, turn over to the United States Trustee, the following: The names and addresses of all parties (including persons, corporations, partnerships and other entities) with whom he has or intends to provide any services relating to bankruptcy matters in this District. The United States Trustee is

authorized to take whatever steps he deems appropriate to inform those parties of their rights with regard to the rulings herein.

- 4) For any bonafide typing services rendered in compliance with Paragraph "1" of this Order, Defendant's maximum compensation is limited to the amount of \$25.00, unless a showing is made to this Court, in compliance with Bankruptcy Rule 2016, that a higher amount is justified under the circumstances for each and every case in which a higher amount is sought.
- 5) With regard to advertising, Defendant is enjoined from advertising in any misleading fashion which leads a reasonable lay person to believe that he offers the public legal services, legal advice, or legal assistance regarding bankruptcy. Defendant is therefore limited to advertising his business activities of providing secretarial, notary, and/or typing services. Defendant may also advertise that he sells bankruptcy forms and general printed information with regard to those forms so long as such information does not constitute legal advice as defined in this Order.
- 6) Nothing in this Order shall be construed as limiting the United States Trustee's authority to request further sanctions in the event of any violation by Defendant Farmer, or others in his

employ mentioned in this Order doing business under any name within this District.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 15th day of March, 1991.